

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2019-10

Title: **AN ORDINANCE ESTABLISHING CHAPTER 387 ENTITLED 'HAWKERS AND PEDDLERS' IN ORDER TO REGULATE THE VENDING, SALE, AND DISTRIBUTION OF GOODS WITHIN THE TOWNSHIP OF LOWER.**

WHEREAS, the Township Council of the Township of Lower has identified a need to adopt rules and regulations related to the hawking, peddling, vending, sale, and distribution of goods within the Township of Lower on its streets, avenues, ways, and sidewalks in order to limit same and to ensure public safety and to avoid/prevent unnecessary police calls pertaining to said activities;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey, that the Chapter 387 regulating Hawking and Peddling within the Township of Lower is hereby established and enacted as follows:

Section 1. Chapter 387, **Hawkers and Peddlers**, is hereby enacted as follows:

Article I. Licensing Regulations

§ 330-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

MOTOR VEHICLE

Any vehicle used for the transporting of articles offered for sale by a vendor, which is required to be licensed and registered by the New Jersey Department of Motor Vehicles, and which is not to be used for the purpose of displaying or vending articles of merchandise.

PERSON

Any individual, but should not be construed to mean a corporation, partnership, association or any other form of business entity.

VENDING UNIT

Any pushcart, wagon or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles used for the displaying, storing or transporting of articles offered for sale by a vendor.

VENDOR

Any person who goes from place to place or from street to street, traveling by foot, automotive vehicle or any other type of conveyance, carrying or transporting merchandise for the purpose of selling and delivering the merchandise to customers. The word "vendor" shall also include the words "peddler" and "hawker."

§387-2. License required.

No person shall hawk, peddle or vend any food products, beverages, confections, goods, wares, merchandise or commodities of any type or description within the Township of Lower except under a license issued by the Township Clerk subject to the rules and regulations as hereinafter provided.

§ 387-3. Registration/License Requirements.

- A. Any person having the type of license issued pursuant to Title 45 of the Revised Statutes of the State of New Jersey (N.J.S.A. 45:24-9 et seq.) who desires to hawk, peddle or vend within the Township of Lower shall, in advance thereof, register with said Township in the following manner:

- a. The applicant for registration shall produce a license issued to him/her by a County Clerk, pursuant to Title 45 of the Revised Statutes of New Jersey. In addition, each licensee shall sign a hold harmless agreement in favor of the Township of Lower.
 - b. He shall complete and sign a form of application for registration made available by the Township, setting forth the following information:
 - i. His/Her name and address.
 - ii. A description of the applicant.
 - iii. Places of residence of the applicant for registration for the past five years immediately preceding the date of application.
 - iv. A description of the nature of the business proposed.
 - v. A description of the vending unit to be utilized. If a motor vehicle is to be utilized in servicing the vending unit, the registration number, license plate number and name and address of the insurance carrier, insurance policy number and statement of coverages must be listed.
 - vi. Whether or not the applicant has ever had a license to conduct the business sought to be registered and whether or not he ever had a license to conduct said business denied or revoked and, if so, setting forth the details thereof.
 - vii. The date, place and nature of the conviction of the registrant of any crime.
 - viii. Two photographs showing the applicant's face, front and profile, representative of the applicant's appearance at the time of the application for registration, of a minimum size of 1 1/2 inches square, which photographs shall be affixed to the application for registration.
 - ix. Proof of insurance policy or policies as recommended by the Atlantic County Joint Insurance Fund or current Township of Lower insurance carrier, issued by an insurance company or companies licensed to do business in the State of New Jersey, protecting the registrant and the Township from all claims or damages to property and bodily injury, including death, which may arise from operations under or in connection with the vending, hawking or peddling. Such insurance shall name as an additional insured the Township of Lower and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the Township. The amounts of insurance required are the minimum insurance requirements of the Atlantic County Joint Insurance Fund.
 - x. A description of the nature of the business, itemizing the items to be sold, however, no vendor may sell anything under this license except hot dogs, soda, water, soft pretzels and prepackaged snacks. No other items may be sold under this license, including such items as ice cream products.
- B. Upon satisfactory completion of the registration process and upon payment of the registration fee, there shall be issued a registration certificate addressed to the applicant to conduct the business

applied for. Such certificate shall contain the signature of the issuing officer and shall show the name, address and photograph of the applicant, the type of business registered for; the kind of goods and services to be sold thereunder; the date of issue; the length of time the certificate shall be operative; and the license number and other identifying description of any vehicle used in the activity licensed. This certificate shall be worn by the vendor in clear view of the public at all times.

- C. Any certificate of health compliance issued by the Cape May County Health Department shall be conspicuously displayed on the vending unit in clear view of the public. No vending unit shall be permitted on the streets or sidewalks of the Township of Lower without such a certificate of health compliance.
- D. A registration shall be renewable each year on or before April 1 unless such registration has been revoked.
- E. Each vendor must own the vending unit which he/she operates, and no vendor may operate any more than one vending unit at any time.
- F. Registrations shall not be assignable or transferable.
- G. With the exception of Veterans and exempt retired firefighters, there shall be a registration fee of \$50 for each vendor;
- H. The Township of Lower shall be notified of any change in business address or residence of the vendor within 30 days by notice, either in writing or in person.

§ 387-4. Applicant requirements.

Each applicant must:

- A. Be a veteran, having been honorably discharged from active military or naval service of the United States for any period of time, and provide proof of a county license issued pursuant to N.J.S.A. 45:24-10.
- B. Maintain his/her principal residence in the Township of Lower and have so maintained such residence for at least 12 months prior to the application. "Principal residence" shall mean that residence at which one actually physically resides at least 50% of the time in each year. In addition, one claiming his or her principal residence in the Township of Lower must continually during the last two years preceding the issuance of his/her license have been registered to vote in the Township of Lower and used his/her Lower Township residence address on his driver's license and federal income tax return. A full-time student who qualifies for a license except that while being away at school he cannot fulfill the physical residence requirement shall nevertheless qualify as a licensee during such schooling, as long as he maintains a residence within the Township of Lower to which he intends to return and does return when school is not in session.
- C. Sign an indemnification and hold harmless agreement with the Township of Lower.
- D. Supply proof that the applicant holds the minimum insurance requirements as recommended by the Atlantic County Joint Insurance Fund or current Township of Lower insurance carrier.

§ 330-5. Number; term; nontransferability.

The number of licenses authorized hereunder shall not exceed 10. In the event that a license is not timely renewed it shall not be reissued by the Township Clerk until such time as its reissuance is authorized by a

duly adopted resolution of Township Council. Any license granted hereunder shall be valid from May 1 in the year of issuance until April 30 of the following year. All licenses issued hereunder shall be nontransferable.

§ 330-6. Issuance.

Licenses shall be issued by the Township Clerk to qualified applicants who apply during regular business hours in the Office of the Township Clerk on a first-come-first-served basis. No one person shall be entitled to more than one license.

§ 330-7. Renewals.

The holder of any license issued hereunder shall have the right to renew the same if application is made on or before June 30 in the year of renewal. In the event that no application for renewal is made, as aforesaid, there will be no automatic right of renewal of the license.

§ 330-8. Residency requirements.

Each licensee shall continue to have his/her principal residence within the Township of Lower, shall be registered to vote in Lower Township and shall continue to use his or her Lower Township residence address on his/her driver's license and federal income tax returns. A violation of this section shall constitute grounds for suspension or revocation of one's license. A suspension or revocation of the license may be appealed to the Township Manager, who will hold a hearing thereon within 14 days of the request therefor.

§ 330-9. Violations and penalties.

Any person violating any provision of this article shall, upon conviction, be punished for each offense by a fine not to exceed \$1,250 or by imprisonment for a term not to exceed 90 days, or both.

§ 330-10. License required; restrictions.

- A. License required. No person shall engage in hawking, peddling or vending within the Township of Lower unless he/she holds and has in his/her possession a valid license permitting hawking, peddling or vending, issued pursuant to and in accordance with the provisions of Title 45 of the Revised Statutes of New Jersey (N.J.S.A. 45:24-9 et seq.), and shall have registered with the Township of Lower as hereinafter provided.
- B. Restrictions.
 - 1. Nothing herein contained shall be deemed or construed to permit the sale of goods or services on the public beaches or within public parks located through the Township of Lower.

§ 330-11. General regulations.

The business of hawking, peddling or vending shall be subject to the following regulations:

- A. Vending shall only be permitted in authorized locations between the hours of 10am and 4pm.
- B. All vending must take place from a vending unit which has been inspected and approved by the Cape May County Department of Health and the Lower Township Bureau of Fire and Safety. All vending units must be on wheels and mobile, and all vending units must be located in a lawful parking spot when vending.
- C. There shall be no vending within 100 feet of the grounds of any school beginning a 1/2 hour prior to the start of the school day until a 1/2 hour after dismissal at the end of the school day.
- D. There shall be no vending within 100 feet of any church, synagogue or other house of worship while same is in session.

- E. No vending unit shall be left unattended for any reason on the streets or sidewalks of the Township of Lower. The licensed vendor must be present with the vending unit during all hours when vending activity is occurring.
- F. There shall be no sale of food or beverage for immediate consumption unless the vendor has made available for the public use a litter receptacle which is available for use by his/her patrons.
- G. No vendor shall leave any location without first picking up, removing or disposing of all trash or refuse remaining from the sales made by him. He shall not sweep or deposit any accumulation of litter into any gutter or street.
- H. No vendor shall allow any items related to the operation of the vending business to be placed anywhere other than in or on the vending unit, except that each vendor may have up to a maximum of one cooler with a total capacity of up to 148 quarts, which may be placed upon the ground near the vending unit.
- I. No vendor shall set up, maintain or permit the use of any table, crate, carton or rack or other device to increase the selling or display capacity of his/her unit. There shall be no stacking of items to be sold upon any sidewalk or street. All materials and/or merchandise must be located solely on the vending unit, with the exception of a cooler.
- J. No vendor shall solicit or conduct business with persons in motor vehicles. All sales are to be conducted from the curbside of the vehicle and only to pedestrians.
- K. No person shall sell anything other than such commodities described in his/her registration.
- L. No vendor shall use any device which produces a loud or raucous noise or use or operate any loudspeaker, public-address system, radio, sound amplifier or similar device to attract the attention of the public.
- M. No hawker, peddler or vendor shall have any exclusive right to any location in the public streets, nor shall he be permitted to operate in any congested area where his/her operation might unreasonably impede the public. A license to hawk, peddle or vend, granted under this article does not authorize the display or sale of merchandise from a fixed location, which is specifically prohibited. For exceptions, see §§ 330-17 and 330-18 hereof.
- N. No vendor shall sell from a vending unit on a sidewalk where the sidewalk is less than nine feet in width, or vend within 10 feet of the outside perimeter of any entrance to any building, or vend within 20 feet of any driveway, within 20 feet of a crosswalk of any intersection, or 20 feet of any bus or jitney zone, within 25 feet of any emergency exit, within 20 feet of any loading and unloading zone, within 50 feet of the principal entrance to a hotel or motel or within 250 feet of any business establishment involved in the distribution, preparation or sale of food.
- O. No vendor shall allow his/her vending unit or any other item relating to the operation of the vending business to be placed against any building or other structure without the consent of the owner of said building or structure.
- P. No person shall hawk, peddle or vend unless he has in his/her possession a valid state license, issued pursuant to Title 45 of the Revised Statutes of the State of New Jersey, and/or his/her registration card with the Township of Lower.

- Q. A vendor may park his/her motor vehicle in close proximity to his/her vending unit and may, from time to time, supply his/her vending unit from the motor vehicle. However, no business shall be conducted from the motor vehicle. The vendor may do nothing which would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay or constitute a hazard to traffic, life or property or an obstruction to adequate access for fire, police or sanitation vehicles. No vendor shall park his/her vending unit or motor vehicle on a sidewalk, nor shall he operate his/her business in any manner which would block the sidewalk for free use by pedestrians. However, the vendor may stand on the sidewalk while vending, as long as he does not block the sidewalk from reasonable use by pedestrians.
- R. All vending units must be thoroughly covered with proper material to assure that no portion that is heated is exposed where the public is able to come in contact with it.
- S. No vendor shall use any conveyance, device or thing whatsoever which, when fully loaded with merchandise, cannot be easily moved and maintained under control by the licensee.
- T. There shall be no mixing of food and nonfood items for sale.
- U. At no time shall a vending unit be located in such a way as to not provide a continuous space of eight feet for pedestrian passage.
- V. Any vendor may be assisted by up to one unlicensed helper, who must be registered with the Township and pay a registration fee of \$50. The unlicensed helper must supply the Township with his or her photo identification for copying and shall have the photo identification on his or her person when assisting the licensed vendor. The licensed vendor, however, must remain at the vending unit at all times, except that the licensed vendor may leave for short periods of time up to 20 minutes to take care of other business, but in the event that he is to be away from the vending unit for more than 20 minutes, then the vending unit must be closed for business during his/her absence. The licensed vendor shall not leave his/her vending unit on more than two occasions during any day.
- W. No vendor may have any writing or signs of any nature on or attached to his/her vending unit, or in the vicinity of the area in which he is vending; except as follows:
- 1) A description of the items he has for sale, and the price thereof, written directly onto the vending unit; and
 - 2) Two signs attached to the vending unit, having a width of no more than 24 inches, and a length or depth of no more than 24 inches.
- X. Vendors shall not park their vending units and/or motor vehicles, overnight, in a parking space from which they intend to vend. Furthermore, no vending unit and/or motor vehicle used in connection with said vending unit shall be permitted to remain in any one parking spot for a period of more than eight (8) consecutive hours.

§ 330-12. Size of vending units.

No vending unit shall exceed four feet in width, seven feet in length and eight feet in height.

§ 330-13. Health and sanitation requirements.

Vendors of food and beverages shall comply with the inspection provisions and standards of the Cape May County Health Department. All vending units must be inspected and approved by the Cape May County

Health Department and the Lower Township Bureau of Fire and Safety. The equipment used in the vending of food and beverages shall be inspected upon application for registration and shall receive a certificate of inspection upon compliance with all applicable ordinances and state statutes. Each food and beverage vending unit shall be inspected at least once a year. In addition to any other health and sanitation requirements, the following regulations must be followed:

- A. All vending units shall be stored in an enclosed garage when not in use. The garage shall have an impervious floor and have adequate floor drains to allow for the cleaning and washing of the vending unit.
- B. The location of the food storage, food preparation and cart storage shall be subject to the applicable provisions of the New Jersey State Sanitary Code, N.J.A.C. 8:21 through 8:24.
- C. All food product storage and preparation areas shall be enclosed by partition and separated from any cart storage or non-food-preparation-related operations. In the event that the mobile cart base is the same as an individual's residence, the commercial food storage and preparation shall be separate from the residential portion of the premises.
- D. All vending units dispensing hot food shall be equipped with:
 - 1) Twin potable-water tanks consisting of a minimum capacity of eight gallons, heated electrically or otherwise and tilted toward a capped drain cock. The water inlet pipe shall be removable, flexible copper or other tubing approved by the Plumbing Subcode Official of the Township of Lower, with a nozzle for a hose connection when not being used.
 - 2) A hand-wash sink, seamless with running hot and cold water, soap and single-service towels.
 - 3) A suitable waste tank with an adequate method of gauging the contents and having a capacity at least equal to the capacity of the water supply tank shall be provided and shall be tilted toward a drain cock. All waste shall be emptied and flushed into a sanitary sewer as often as necessary, in a sanitary manner, in order to maintain sanitary conditions.
 - 4) A refrigerated box capable of maintaining a temperature of 45° F. and equipped with an indicating thermometer shall be provided for various ingredients carried, with metal racks or platforms provided to store ingredients.
 - 5) A refuse container, with cover, attached to the cart for the deposit of papers and other solid wastes by customers and operators. Said container must be readily cleanable and kept clean.
- E. Additional health regulations.
 - 1) Vending units operating after sundown shall be lighted with at least 30 footcandles of light on all working surfaces.
 - 2) Every vending unit shall be constructed of such acceptable material as to enable it to be readily cleaned, and equipment shall be installed in such a manner that the unit can be kept clean and food will not be contaminated during cooking, serving, display or storage.
 - 3) Food-contact surfaces of vending units shall be provided with a close-fitting lid to protect food products from dust, dirt and splash.
 - 4) Vending units shall be disassembled and cleaned daily or more often as deemed necessary by the health authority. All food contact surfaces of vending units shall be washed, rinsed and

sanitized in accordance with procedures of the applicable chapter of the New Jersey State Sanitary Code.

- 5) The cart-cleaning process at the vending base of operation shall be segregated from food product storage, preparation, cleaning or refuse areas.
- 6) Wastewater from any discharge shall be disposed of in a sanitary manner and shall not create a nuisance.
- 7) All perishable foods transferred from a distribution point and delivered to the vending unit must be done under refrigeration.

§ 330-14. Safety requirements.

All vending units, whether in motor vehicles or not, in or from which food is prepared or sold shall comply with the following requirements:

- A. All equipment installed in any part of the vending unit shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- B. All utensils shall be stored in order to prevent their being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided to avoid the loose storage of knives.
- C. Compressors, auxiliary engines, generators, batteries, battery chargers, gas-fueled water heaters and similar equipment shall be installed so as to be accessible only from the outside of the unit.

§ 330-15. Suspension or revocation of licenses.

- A. Licenses issued under the provisions of this article may be suspended or revoked by any court of proper jurisdiction, including the Lower Township Municipal Court, for any of the following reasons:
 - 1) Fraud or material misrepresentation contained in the application.
 - 2) Fraud or material misrepresentation made in the course of carrying on the business of vending.
 - 3) Conducting a business in such a manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
- B. Violation of any of the regulations of this article may result in suspension or revocation of the vendor's right to vend within the Township of Lower by action of the Township Manager. The township Manager must first notify the vendor, in writing, of his/her proposed action and serve the vendor either personally or by certified mail, return receipt requested, to the address the vendor last supplied to the Township Clerk. The notice shall give the vendor three business days to request a hearing from the Township Manager, and if he does, the hearing shall be held within seven days thereafter. Notice of suspension or revocation shall become an enforceable order of suspension or revocation in the event that a hearing is not timely requested. In the event a hearing has been held and a determination made, the determination shall constitute an enforceable order.

§ 330-16. Violations and penalties.

Any person violating any of the provisions of this ordinance shall, upon conviction in a court of proper jurisdiction, be punished by a fine not exceeding \$1,250 or by imprisonment not exceeding 90 days, or both. If a violation is immediately correctable by moving the vending unit, failure to do so upon the request of a police officer shall constitute a separate offense and may subject the vendor to arrest and the towing of his/her vending unit. Every day that a violation of this article exists shall constitute a separate offense. In the event that a police officer, in the exercise of his or her discretion, determines that a particular violation is resulting in a dangerous condition or is a violation of health regulations, the police officer may immediately terminate that vendor's right to vend until the vendor has corrected the violation.

§ 330-17. Prohibited Vending Locations.

- A. It shall be unlawful for a vendor to park his, her or its vending unit in a metered parking space and to vend therefrom.
- B. Vending is expressly prohibited on or along the streets and/or sidewalks of Beach or Shore Drive from the intersection of Lincoln Drive north.
- C. No vending shall be permitted along any intersecting street or within 250ft. west of said intersection.

§ 330-18. Special events waiver.

The Mayor, with the approval of Township Council, may waive any of the regulations contained in this article in connection with special events and shall do so by written notification to the Lower Township Police Department.

Section 2. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

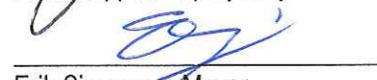
Section 4. This Ordinance shall become effective 20 days after final passage and publication according to law.


Thomas Conrad, Councilmember


David Perry, Councilmember

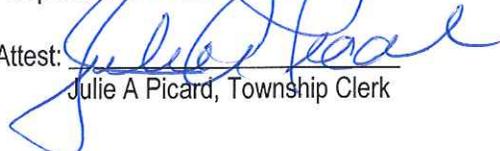

Roland Roy, Jr., Councilmember


Frank Sippel, Deputy Mayor


Erik Simonsen, Mayor

First Reading: May 20, 2019

Adopted: 

Attest: 
Julie A Picard, Township Clerk